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IN THE UNITED STATES DISTRICT COURT <sup>FEB 03 2025</sup>  
OF THE NINTH DISTRICT  
GREAT FALLS DIVISION

Clerk, U.S. Courts  
District of Montana  
Billings Division

ALEXANDRE ZDENEK DAVIS  
PLAINTIFF

V.

Jesse slaughter, et. al.  
DEPENDANTS

CAUSE NO: CV24-03-GF-DWM

RESPONSE TO MOTION  
DISMISS (Document 80)

Now comes plaintiff in pro-se, to respond to the motion to dismiss on Document 80.

Defendants are trying to dismiss claims 1, 2, 3, 4, and 7. I will explain why they should not be dismissed.

MEMORANDUM IN SUPPORT



ARGUMENTCLAIM ONEFAILURE TO PROTECT RESPONSE

Before we get into my response, I want the court to know that before I amended my complaint, I had proven that these defendants were indeed responsible for my rape at CCDC and we were supposed to have pre-Trial arranged for January of 2025 but I agreed with the defendant's legal team that it was indeed not a lower officer's fault for my rape but rather that it was a higher up supervisor's fault which makes it indeed the fault of Sheriff Slaughter, Undersheriff Van Dyken, Captain Darby, and Lieutenant Grubb.

Staff were not properly trained by these supervisors to conduct count properly or on placing inmates in the correct housing placement. This falls directly upon defendants Slaughter, Van Dyken, Darby, and Grubb. Officers Knox and Fraser literally told me that Frieze had violated PREA at CCDC numerous times before he raped me on 9 AUG and 10 AUG 2023. These 4 defendants have a policy that any inmate who violates PREA, is to be housed in solitary confinement housing. This is stated in the CCDC handbook signed by Slaughter. It was the responsibility of these 4 defendants to ensure Frieze never had a cellmate again, instead I got raped by him.

These 4 defendants were also notified by me numerous times in electronic and paper letters / inmate requests that I wanted to resolve this out of the court



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without a lawsuit. Instead, they told me to go ahead and sue, verbally. You can see these requests in defendants' documentary evidence. Now, I took the liberty to sue only the supervisor's of CDC per the verbal request of Jennifer Morgan, the opposition's counsel. If they want me to sue the "right person", they should give me their patsy. But, seeing as that will never happen, I stick to suing these 4 defendants for their INDIRECT PARTICIPATION in my rape.

A defendant may be held liable "if the defendant[s] set in motion a series of events" that he or she knew or reasonably should have known would cause a constitutional violation, even if others actually performed the violation. Conner v. Reinhard, 847 F.2d 384, 397 (7<sup>th</sup> Cir. 1988); Bruner v. Baker, 506 F.3d 1021, 1026 (10<sup>th</sup> Cir. 2007); Valdes v. Crosby, 450 F.3d 1231, 1239-43 (11<sup>th</sup> Cir. 2006); Garrison v. Kemp, 891 F.2d 829, 836 (11<sup>th</sup> Cir. 1990); and Wulf v. City of Wichita, 883 F.2d 842, 864 (10<sup>th</sup> Cir. 1989) Officials like Slaughter who set policy, write regulations, or give orders are liable even if not directly involved. Brock v. Wright, 315 F.3d 158, 165-66 (2d Cir. 2003); Redman v. County of San Diego, 942 F.2d 1435, 1446-49 (9<sup>th</sup> Cir. 1991) (sheriff who tolerated overcrowding and approved a dangerous classification policy could be held liable even though he did not know the specific danger to the plaintiff; captain who followed policy was liable too); Boswell v. Sherburne County, 849 F.2d 1117, 1123 (10<sup>th</sup> Cir. 1988) (sheriff and chief held liable); In fact, when prison employees act pursuant to orders, policy or regulation, the order giver or policy maker, in this case the 4 defendants of claim one, may be the only person to be held liable. See Redman above. Id.



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These defendants can also be held liable for their failure to Act. Officers or supervisors can be held liable if they fail to intervene when a prisoner is or can be subjected to brutality by staff or assault by other inmates. Supervisors who know, or reasonably should know that an inmate will be victimized can be held liable if they do not do anything about it. They knew Friese was arrested for rape, they knew Friese was a danger to other inmates, they knew Friese sexually assaulted other inmates, and still kept him in general population where he raped me. see Greason, Id.

These supervisors also failed to have phones or emergencies setup for inmates in D unit in the case a rape took place. It took me filing this lawsuit and filing grievances for sexual assault hotlines to be placed in D unit at CCDC.

The failure to train or supervise subordinates establishes liability to the higher ups. Taylor v. Michigan Dep't of corrections, 69 F.3d 76, 81 (6<sup>th</sup> cir. 1995) (holding supervisor responsible for rape of an inmate); Roland v. Johnson, 856 F.2d 764, 767, 770 (6<sup>th</sup> cir. 1988) (holding sexual assaults at facility fell on supervisor's liability); and Martin v. White, 742 F.2d 469, 475-76 (8<sup>th</sup> cir. 1984) (similar to Roland).

In conclusion, Slaughter, Van Dyken, Darby, and Grubb, are the liable parties and they are responsible for my rape at CCDC. CLAIM ONE SHOULD NOT BE DISMISSED



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## CLAIM TWO

### PREA VIOLATIONS RESPONSE.

It is true that I have not named anyone specifically but it should be ordered that measures be taken that CCDC is more compliant with PREA.

It took my rape just for officials to post hotlines for sexual assault in D unit of CCDC.

Inmates should also receive mental health care at CCDC if raped.

Lastly, the showers situation could be modified to placing covers and curtains at shower stalls so inmates and staff do not partake in voyeurism at CCDC. Some units have shower cages installed.

In conclusion, Claim Two should not be dismissed because changes need to happen at CCDC.



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CLAIM THREEMONTANA'S DUTY OF CARE VIOLATION RESPONSE

Defendant's state they did not violate Montana's duty of care by allowing me to get raped at CDC. I will prove that they did in fact violate by citing cases that the Honorable Judge ~~Donald W. Malloy~~ <sup>DONALD W. MALLOY</sup> has cited in numerous failure to protect claims. Nelson v. Driscoll, 1999 MT-193, 983 P. 2d 972, 977, 981, 295, Mont. 363 (Mont. 1999), "A duty arises where an officer takes affirmative steps that increase the risk of danger to an individual." Allowing inmate Friese to be in general population after already violating PREA and CDC policies, was indeed the taking of "Affirmative steps that increase the risk" of danger to myself. I was raped because of them. Also cited by ~~Donald W. Malloy~~ <sup>DONALD W. MALLOY</sup>, Whitfield v. Therriault Corp., 229 Mont. 115, 745 P. 2d 1126, 1127 (Mont. 1987), "A claim of negligence must establish a legal duty, breach of that, and damages caused by the breach." I identified all of those in claim one's response.

On top of this, while I was a federal inmate, defendants had to also follow USCS §4042 which is the protection of Federal inmates.

In conclusion, Claim Three should not be dismissed.



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CLAIM FOURSHELTER AND OVERCROWDING RESPONSE

A prisoner must be provided with "shelter that does not cause his degeneration or threaten his mental and physical well being". Ramos v. Lamm, 639 F.2d 559, 568 (10<sup>th</sup> Cir. 1980). In my case, I was placed in a cell with an inmate named Joseph Fricse who violated not only state law for raping a citizen, but while at CCDC, he violated the inmate handbook of sexual assault and the National (PREA) PRISON RAPE ELIMINATION ACT numerous times at CCDC before ~~and~~ I was housed with him. Then out of retaliation for filing a lawsuit, Van Dyken ordered Grubb and Darby to illegally confine me to a cell in booking with no bunk, no recreation time, no access to attorney phone calls, no general phone calls, and no showers except once a week, no psychology treatment, no communication with inmates, and instructed officers to ignore my grievances that my mental health and ARMY PTSD were triggered to extremely bad psychological levels. To support I cite Carver v. Knox County, Tenn., 753 F. Supp. 1370, 1386-87 (E.D. Tenn. 1989).

As for overcrowding, I did more than spend just "one night" on the floor. I spent numerous nights on the floor of a cell with inmate Fricse who sexually assaulted me twice on 09AUG2023 and 10AUG2023. One important aspect of shelter is whether it is adequate to the number of people confined in it. Courts have found that crowding is unconstitutional when it is linked to violence or other safety hazards. Ruiz v. Estelle, 679 F.2d 1115, 1140-42 (5<sup>th</sup> Cir. 1982); Carly v. Farrelly, 957 F. Supp. 727, 735 (D.V.I. 1997); Albro v. County of Onondaga, 681 F. Supp. 991, 994-95 (N.D.N.Y. 1988). When overcrowding can be shown to have caused injury, for example from violence, damages may be awarded. Redman v. County of San Diego, 942 F.2d 1435 and Doe by and through Doe v. Washington County, 150 F.3d 920, 922-24 (8<sup>th</sup> Cir. 1998).



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Therefore, my claims that overcrowding at CCDC are not only valid but are unconstitutional because rather than tell the United States Marshall's office that there is no need for another Federal inmate like myself due to no bed space at their facility, Slaughter, Van Dyken, Darby, and Grubb, put me in a dangerous cell already filled with a dangerous inmate, who by their handbook and policies, should have been placed in solitary segregation. The defendants willfully endangered my life due to their overcrowding, greed for more Federal money, and disregard to any inmates' safety at CCDC.

In conclusion, this was a constitutional violation under the Eighth Amendment and should NOT be dismissed.

CLAIM



## CLAIM SEVEN

### DENIAL OF MEDICAL/MENTAL HEALTH CARE RESPONSE.

It appears as though I was not specific on what constitutional right was violated, so I am responding with it as being a violation of the Eighth Amendment. Mental Health care is subject to the same constitutional standard as other forms of prison medical care: deliberate indifference to serious mental health needs violates the Eighth Amendment. Defendant Jacki Miller chose not to provide Mental Health services for my rape at CDC from 08/10/2023 to January of 2024. When Miller did start mental Health care, Van Dyken forced Miller to stop providing mental health care to me because I filed this lawsuit. PREA states I was to receive mental health following my rape. It took nearly 6 months to get it and in February of 2024, Van Dyken revoked it out of retaliation. This indeed is a constitutional violation and a claim that relief can be granted on.

In conclusion, this claim should not be denied.

### CONCLUSION.

For the foregoing reasons, the claims against defendants should not be denied or dismissed.

Dated this 28<sup>th</sup> Day of January, 2025



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